Supreme Court, U. S.
FILED
MAR 22 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1289

SAKS AND COMPANY, ALFRED DUNHILL OF LONDON, INC. and FABER, COE & GREGG, INC.,

Cross-Petitioners,

—against—

THE REPUBLIC OF CUBA and DANIEL SOLANO PINERA as Interventor,

Respondents,

ALONSO MENENDEZ, *et. al.*,

Respondents.

RESPONSE OF THE INTERVENTOR-RESPONDENTS, THE REPUBLIC OF CUBA AND DANIEL SOLANO PINERA, AS INTERVENTOR.

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Attorneys for Interventor-Respondents
30 East 42nd Street
New York, New York 10017

March 21, 1974

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Statement

The Republic of Cuba and Daniel Solano Pinera, the interventor-respondents herein, agree with the "cross-petitioners" that, if this court wishes to review this entire litigation by granting the companion petitions for writs of certiorari (Nos. 73-1287 and 73-1288) the Court should also grant a writ as to the first issue presented by the cross-petitions. The interplay of issues in this case has created a complex of claims and cross-claims which may require wholesale realignment should the Court reverse as to any of the issues presented in Nos. 73-1287 and 73-1288 and it

would be patently unfair not to review the first issue presented by the cross-petitioners in such circumstances.

There is however no reason at all to grant this petition as to the second issue, relating to the allowance of interest. Cross-petitioners insist here, as they did below, that interest should be imposed only when a debtor wrongfully withholds money due. They cite no authority for this proposition and there is none.

This is a diversity case and hence New York law applies. That law is set down in section 5001(a) of the New York C.P.L.R. and the section admits of no exceptions. The recent decision of the Court of Appeals in *Spector* v. *Mermelstein*, 485 F.2d 474 (2d Cir., 1973) is directly in point and is clearly in accord with the law. See the cases cited therein.

We might see some equitable argument in favor of the cross-petitioners had they deposited the money in court or had they for some other reason been deprived of the use of the money for the 14 years in which this case has been pending. In such event there might be some conflict between the clear provisions of the New York State law and equitable considerations which would make the application of that law very unfair. We need not concern ourselves with what would happen in that situation because the cross-petitioners did have and did use the money during that entire fourteen year period and there is no reason why they should not pay for it both as a matter of law and as a matter of equity and fairness.

Respectfully submitted,

Dated: March 21, 1974

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